

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

VANTAGE LOGISTICS LLC,

Plaintiff,

v.

**Civil Action 2:19-cv-5400
Chief Judge Algenon L. Marbley
Magistrate Judge Chelsey M. Vascura**

DEWAR NURSERIES, INC.,

Defendant.

REPORT AND RECOMMENDATION

This matter is before the undersigned for a Report and Recommendation on the Court's October 30, 2020 Show Cause Order (ECF No. 71). For the reasons that follow, it is **RECOMMENDED** that Third Party Plaintiff Dewar Nurseries, Inc.'s ("Dewar") claims against Third Party Defendant Transport by RC ("Transport by RC") be **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute.

The docket reflects that Third Party Defendant Transport by RC ("Transport by RC") was served on May 21, 2020, making its answer due on June 11, 2020. (ECF Nos. 37–38.) Transport by RC then obtained extensions of time to respond to the Third Party Complaint until July 23, 2020. (ECF Nos. 41, 47.) Although Transport by RC failed to file a timely answer or other response to the Third Party Complaint, Dewar did not apply for an entry of default from the Clerk pursuant to Federal Rule of Civil Procedure 55(a). On October 30, 2020, the Court ordered Dewar to show cause why the claims against Transport by RC should not be dismissed for want of prosecution within fourteen days of the Show Cause Order unless it had filed an application for entry of default in the interim. (ECF No. 71.)

To date, Dewar has not responded to the Show Cause Order and has not filed an application for entry of default against Transport by RC. It is therefore **RECOMMENDED** that Dewar's claims against Transport by RC be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(b) for failure to prosecute.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE